

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MALIBU MEDIA, LLC,) Docket No. 18 C 6447
Plaintiff/)
Counterdefendant,) Chicago, Illinois
v.) November 14, 2019
WILLIAM MULLINS,) 8:58 a.m.
Defendant/)
Counterplaintiff.)

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

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1 (In open court.)

2 (Clerk places telephone call.)

3 MS. SCHULZ: This is Mary Schulz.

4 THE CLERK: Hi, Ms. Schulz. It's Sandy with Judge
5 Durkin calling on 18 C 6447, Malibu Media v. Doe.

6 MS. SCHULZ: Mary Schulz on behalf of Malibu Media.

7 THE COURT: And let's have the attorneys in court
8 identify themselves.

9 MS. CLAY: Lisa Clay on behalf of defendant.

10 MS. MALTER: Susan Malter on behalf of defendant.

11 THE COURT: All right. The original complaint in this
12 case was dismissed by the plaintiff. The counterclaim remains.
13 I had suggested that possibly a statement from Malibu Media
14 that Mr. Mullins did not steal or download the movie would go a
15 long way possibly to trying to get this case resolved.

16 There was a "Statement of Non-Infringement." From
17 what I can see, that apparently has not satisfied the
18 defendant. Is that correct?

19 MS. CLAY: Correct, your Honor.

20 THE COURT: Counterplaintiff.

21 All right. And you're asking for additional time now
22 to conduct discovery on your case. Why is there a case in
23 controversy if you say he didn't download it?

24 MS. CLAY: Your Honor, the problem is we're back to
25 bad faith. And I apologize. I'd hoped I'd have time to look

1 back at the transcript.

2 You had ordered counterdefendant to produce certain
3 evidence, and it was very specific. They still have not done
4 that.

5 THE COURT: Let's stop right there.

6 Ms. Schulz, where is that information? I did -- I do
7 recall ordering it to be disclosed, and it's been represented
8 in the motion to extend discovery that it wasn't turned over.

9 MS. CLAY: That is correct.

10 MS. SCHULZ: Your Honor, I don't know what she's
11 talking about. I did disclose since the last hearing details
12 of our investigation.

13 I apologize. I, frankly, haven't read the motion to
14 continue discovery -- extend discovery.

15 THE COURT: It's Document 54. If you need time to
16 read it, I'll recall the case and we'll recall you.

17 MS. SCHULZ: Thank you.

18 MS. CLAY: Actually, if --

19 MS. SCHULZ: I can do that.

20 MS. CLAY: -- if we did that --

21 THE COURT: Pardon me?

22 MS. CLAY: I would like to recall as well. I'd like
23 to find a couple of sections in the transcript from the --

24 THE COURT: All right. We'll --

25 MS. CLAY: -- last time --

1 THE COURT: -- recall the --

2 MS. CLAY: -- I'd like to point out.

3 THE COURT: -- case probably in about 10, 15 minutes
4 when I have --

5 MS. CLAY: Perfect.

6 THE COURT: -- the other cases heard.

7 MS. SCHULZ: Thank you, your Honor.

8 MS. CLAY: Thank you, your Honor.

9 THE COURT: Thank you.

10 MS. MALTER: Thank you.

11 (The Court attends to other matters.)

12 THE CLERK: 18 C 6447, Malibu Media v. Doe.

13 And let me get Ms. Schulz on the line.

14 (Clerk places telephone call.)

15 MS. SCHULZ: This is Mary Schulz.

16 THE CLERK: Hi. Good morning. It's Sandy with Judge
17 Durkin calling on 18 C 6447, Malibu Media v. Doe.

18 THE COURT: All right. Good morning. Let's have the
19 attorneys in court identify themselves.

20 MS. CLAY: Yes, your Honor. Lisa Clay on behalf of
21 defendant.

22 MS. MALTER: Susan Malter on behalf of defendant.

23 THE COURT: All right. As we said last time, there
24 was a -- plaintiff voluntarily dismissed their complaint. The
25 defendant had filed a counterclaim. That counterclaim is still

1 pending. And then there was a motion to extend discovery on
2 the counterclaim for another six months, until May 15th, 2020.

3 Has everyone read that motion now? Obviously, the
4 counterdefendants have read it. They prepared it. But -- or
5 counterplaintiff has read it. They prepared it. But,
6 Ms. Schulz, have you read it?

7 MS. SCHULZ: Yes, your Honor, I have.

8 THE COURT: All right. Do you oppose the motion for
9 extending discovery?

10 MS. SCHULZ: Yes, your Honor, I do.

11 THE COURT: Why?

12 MS. SCHULZ: Because, your Honor, as I read the
13 complaint, the counterclaim, it is for a declaration of
14 noninfringement. With the filing of our "Statement of
15 Non-Infringement," that should moot the counterclaim.

16 And there needs -- there shouldn't be any need for
17 further discovery because the essence of the counterclaim has
18 been satisfied.

19 THE COURT: All right. Response?

20 MS. CLAY: Your Honor, I'd like to go back just a
21 moment because I think one of the issues that we're struggling
22 with is Ms. Schulz describes evidence in a different way -- and
23 I'm putting "evidence" in air quotes -- and counterdefendant --
24 or sorry -- counterplaintiff is describing it a very different
25 way.

1 I want to be very targeted in what the issue here is.
2 In paragraph 18 of plaintiff's original amended complaint, they
3 suggest "Plaintiff's investigator downloaded from Defendant one
4 or more pieces of each of the digital media files identified by
5 the file hashes listed on Exhibit A."

6 So when you hear counterplaintiff discuss evidence and
7 a request for evidence, that is the evidence that we have been
8 asking Ms. Schulz to produce since I got involved in this case
9 X number of months ago. So if we can just stay focused on that
10 evidence.

11 At the first hearing that I attended, which was I
12 believe in August -- and this was after you had denied
13 defendant's motion to dismiss. We were in discovery. And you
14 encouraged the parties to engage in discovery informally, which
15 we, meaning the defendant/counterplaintiff, attempted to do in
16 good faith.

17 We did not get cooperation from
18 plaintiff/counterdefendant. What we got was a list of -- of
19 movies -- okay? -- not the underlying evidence.

20 At that hearing, Ms. Schulz made certain
21 representations and admitted that she did not have that
22 evidence, admitted that she had not reviewed that evidence.
23 And in meet-and-confers between the parties, she doubled down
24 on that. She admitted that again.

25 At the next hearing, which was in August -- or

1 sorry -- in October -- and this was after we had attempted to
2 get that evidence through both formal and the informal
3 discovery process that you had requested and after you had
4 ordered Ms. Schulz to provide us that evidence -- you once
5 again, after they filed their Rule 41, said in the context of
6 our counterclaim, our declaration request, that they needed to
7 produce -- and I want to quote your language -- the
8 "information you used to justify the filing."

9 In my mind, that means the documentation that I just
10 described from paragraph 18. Ms. Schulz has never given us
11 that.

12 And just as an aside, your Honor, I asked Ms. Schulz
13 repeatedly to continue this so that my technical counsel could
14 be here today. She refused. So the person who is in the best
15 position to explain to you what that evidence is, how easy it
16 is for Malibu Media to produce it because it's been produced
17 multiple times in the past -- Ms. Schulz would not agree to
18 that continuance.

19 And so, unfortunately, I'm prejudiced because I don't
20 have that experience and I am not technically competent to
21 describe what that evidence is, what it looks like, and what it
22 should be produced -- the form that it should be produced in.

23 THE COURT: When can your counsel be available, your
24 co-counsel?

25 MS. CLAY: He's in Russia at the moment. And then the

1 week that you're unavailable, I disappear the week after that.
2 The first time he and I are both available is the middle of
3 December, unfortunately.

4 THE COURT: All right.

5 Well, any objection to continuing this motion to
6 extend discovery, Ms. Schulz, to the middle of December?

7 MS. SCHULZ: Your Honor, my only objection to
8 continuing this matter was I requested that we're --
9 Mr. Mullins stay further activity in this case, not run up
10 fees, all in accordance with the previous request I made in
11 court in October. That was -- that was not -- that request was
12 denied. I'm fearful that any delays will just result in more
13 court filings, more running up of fees for what I consider to
14 be a moot issue.

15 THE COURT: Well, I haven't decided it's moot. If you
16 have a motion to dismiss you want to file saying that the case
17 is moot in light of the document that was filed, saying --
18 well, there was a lot of things there that were -- the
19 "Statement of Non-Infringement" contained many paragraphs
20 saying, "We didn't do anything wrong," "we," Malibu Media.

21 But ultimately there was a statement, "Based" --
22 paragraph 11 -- "Based on the denials of infringement and the
23 information provided by Mullins, Malibu now believes that the
24 infringement was done by someone other than Mullins."

25 That ought to satisfy Mr. Mullins. But apparently it

1 doesn't. And if you think that statement moots the case, you
2 ought to file a motion to dismiss based on that.

3 I -- I don't know what Mr. Mullins's motivation is to
4 continue this in light of the fact that Malibu Media has said
5 unequivocally, after ten paragraphs of equivocation, in
6 eleventh -- the eleventh paragraph, they said he didn't do it.
7 That's how I read it. It's common English. And anyone -- if
8 Mr. Mullins was worried about his reputation, his -- attacks on
9 his character or anything else, paragraph 11 ought to satisfy
10 him because it's written in plain English.

11 But if you think, Ms. -- Ms. Schulz, that moots the
12 case, file a motion to dismiss saying there's no case in
13 controversy.

14 MS. SCHULZ: Your Honor --

15 THE COURT: I'll let the other side respond to it, and
16 I'll rule on it in due course. I'm not prepared to rule on it
17 orally today.

18 Go ahead, Ms. Schulz.

19 MS. SCHULZ: Your Honor, I just want to mention that
20 counsel indicated to me in an e-mail that she thought that the
21 declaration was improper. What -- or not proper. I requested
22 her suggestions on what would be proper. I'm still open to
23 modifying that declaration if -- if she wants to give me some
24 suggestions. In the meantime, we will file a motion to
25 dismiss.

1 THE COURT: All right. Notice it up for a date in
2 December we're going to have where the co-counsel for
3 counterplaintiff can be here.

4 What date would you want to do it?

5 MS. CLAY: Let me look.

6 May I briefly respond to that exchange?

7 THE COURT: It -- I don't really need a response. I'm
8 not -- I'm not being short. I've got two other matters where
9 people are in custody, and I -- I --

10 MS. CLAY: Understood.

11 THE COURT: -- want to move forward.

12 MS. CLAY: I believe the earliest day that both
13 Mr. Edmondson and I are available is the -- December 12th.

14 THE COURT: How does that work, Sandy?

15 THE CLERK: No. You're not here.

16 THE COURT: Oh. Then I'm not here. Let's do it the
17 following week.

18 MS. CLAY: All right.

19 THE COURT: Assuming the case we just had up is not
20 going to go, how is the 17th?

21 THE CLERK: That's fine.

22 MS. SCHULZ: I'm available on the 17th, your Honor.

23 MS. CLAY: I will make myself available.

24 THE COURT: All right. And if your co-counsel -- is
25 he from Chicago? -- he or she from Chicago?

1 MS. CLAY: No.

2 THE COURT: Where is --

3 MS. CLAY: No, he is not. He lives in Oregon.

4 THE COURT: He's free to participate by phone.

5 MS. CLAY: If he were not in Russia, he would have
6 done that today.

7 THE COURT: All right.

8 MS. CLAY: But that's not an option.

9 THE COURT: The only reason he's coming in,
10 apparently -- I assume -- is to explain why a request you made
11 for certain information as part of the original case wasn't
12 complied with, according to -- according to you, and
13 technically how that information is something Malibu Media can
14 provide as he can explain it.

15 MS. CLAY: That's one piece of it.

16 The other piece of it is we will, unfortunately --
17 I -- I want to take Ms. Schulz's commentary about fees to
18 heart. But what she has filed is -- is improper for lots and
19 lots of reasons. I can address some of those reasons. I
20 understand you're --

21 THE COURT: By what she filed, you mean the complaint?

22 MS. CLAY: This "Statement of Non-Infringement."

23 THE COURT: There's no rules for what that is. That's
24 meant to be a -- almost a -- I don't know how it could be
25 improper when there's no rules relating to how it should be

1 prepared. It contains a statement Mr. Mullins didn't download
2 the movies. It contains ten paragraphs of "We acted in good
3 faith throughout it."

4 I'm almost -- since it's not a -- an actual pleading,
5 it didn't even have to be, frankly, filed with the Court. It
6 would be something I had anticipated would be a communication
7 between Mr. Mullins through counsel and Malibu Media so that
8 Mr. Mullins would know he's not going to be labeled a
9 pornography downloader and thief, which I assume is something
10 he was offended by and thought the complaint was made in bad
11 faith and that this apology, or at least representation, would
12 satisfy him.

13 So I don't know how this could be improper because
14 there's no rules as to what it should contain anyway. It was a
15 suggestion by me in the nature of maybe one way to try and
16 resolve this case without continuing to incur a lot of
17 attorneys' fees for both sides.

18 But we'll have that -- we'll have a status on the --

19 What was the date again, Sandy?

20 THE CLERK: 17th.

21 THE COURT: (Continuing) -- 17th at 9:00.

22 Ms. Schulz, you may want to come in for this.

23 MS. SCHULZ: I believe I will.

24 THE COURT: Yeah, because it's more difficult to get
25 two people on the phone. Your co-counsel from Oregon doesn't

1 have to fly in because I'm not sure how much time this is going
2 to take.

3 MS. CLAY: Of course not, your Honor. Thank you.

4 THE COURT: And, Ms. Schulz, if you intend to file a
5 motion to dismiss because you believe there's no case in
6 controversy, file it on or before -- well, file it before that
7 date so we can set -- at least set a briefing schedule. Notice
8 it up --

9 MS. SCHULZ: [Unintelligible.]

10 THE COURT: -- for that date but have it on file so
11 the other side knows how much time they need to respond to it.

12 MS. SCHULZ: I will.

13 THE COURT: Okay. Anything else we need to discuss
14 today?

15 MS. CLAY: No, your Honor. Thank you.

16 THE COURT: All right.

17 MS. MALTER: Thank you, your Honor.

18 THE COURT: And, Ms. Schulz, anything else?

19 MS. SCHULZ: Your Honor, again, I plead that we do a
20 standstill with regard to further litigation in this matter,
21 with the exception of my filing the motion to dismiss. And --

22 MS. CLAY: No.

23 MS. SCHULZ: And we won't even need to have a response
24 to that because that will be taken care of at the hearing on
25 the 17th.

1 THE COURT: Well, you're optimistic on that. I'm not
2 sure that's going to be true. I'll likely give the other side
3 a chance to respond. The only thing --

4 MS. SCHULZ: I understand.

5 THE COURT: But --

6 MS. SCHULZ: But between now and the 17th, I would
7 like to not have discovery requests issued and -- and on and on
8 and on.

9 THE COURT: Are you going to be issuing more discovery
10 between now and the 17th?

11 MS. CLAY: Here's what I would prefer, your Honor.
12 I -- I want to be respectful of Ms. Schulz's concern. I think
13 we need to determine where we are procedurally.

14 You have a representation from counterdefendant [sic]
15 that whatever we do will not show up on a bill when we get to a
16 point where we are looking to seek fees in this case.

17 Now, I would prefer that I be allowed to do whatever I
18 want to do. If Ms. Schulz is concerned about attorneys' fees,
19 which is the only concern she has expressed, I can assuage that
20 for her.

21 THE COURT: Well, let's do it this way. Unless it's
22 agreed discovery --

23 MS. CLAY: Mm-hmm.

24 THE COURT: -- because even though you may not be
25 seeking costs for discovery you propound, she may have to incur

1 fees on behalf of her client to respond to it.

2 So unless it's agreed discovery, let's hold off till
3 the 17th. If I don't dismiss the case, I'll likely extend the
4 discovery cutoff and let this case proceed as a normal case.

5 MS. CLAY: Thank you.

6 THE COURT: So nothing unless it's by agreement
7 between now and the 17th.

8 MS. CLAY: Perfect.

9 THE COURT: All right. Thank you all.

10 MS. CLAY: Thank you.

11 MS. MALTER: Thank you, your Honor.

12 MS. SCHULZ: Thank you, Judge.

13 (Concluded at 9:34 a.m.)

14 C E R T I F I C A T E

15 I certify that the foregoing is a correct transcript, to
16 the extent possible, of the record of proceedings in the
17 above-entitled matter given the limitations of conducting
18 proceedings via telephone.

19

20 /s/ LAURA R. RENKE November 22, 2019
LAURA R. RENKE, CSR, RDR, CRR
21 Official Court Reporter

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